U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33960571

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a construction industry executive and entrepreneur, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that, contrary to the Act, the Petitioner did not demonstrate that his work would prospectively benefit the United States. The Director also found that, contrary to regulations, the Petitioner met only two of ten initial evidentiary criteria for the requested category – one less than needed for a final merits determination. On appeal, the Petitioner contends that he established his work's prospective benefits to the country and submitted evidence of his:

- Receipt of lesser nationally or internationally recognized awards;
- Original contributions of major significance to his field; and
- Performance in a leading or critical role for organizations with distinguished reputations.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he established his work's prospective benefit to the United States and his receipt of nationally recognized awards. We will therefore withdraw the Director's decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"

- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Evidence of extraordinary ability must initially demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).[1] If a petitioner meets either standard, U.S. Citizenship and Immigration Services (USCIS) must make a final merits determination as to whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. Facts and Procedural History

The record shows that the Petitioner, an Ethiopian native and citizen, received an advanced diploma in building engineering from a university in his home country in 1994. The following year, he began working as a junior site engineer. The Petitioner worked his way up to project manager before founding his own construction company in Ethiopia in 2002. His company now employs about 2,000 people and, in 2022, generated revenues of about $42 million. The Petitioner states that, in the United States, he seeks to establish his own construction company and obtain a contractor's license.

The record does not indicate – nor does the Petitioner claim – his receipt of a major internationally recognized award. He must therefore meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director's findings that the Petitioner met the evidentiary criteria regarding published material about him and his commandment of a high salary in his field. *See* 8 C.F.R. § 204.5(h)(3)(iii), (ix). We will first consider whether he demonstrated that his U.S. entry would substantially benefit the country in the future.

B. Prospective Benefit to the United States

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that their "entry into the United States will substantially benefit prospectively the United States." Section 203(b)(1)(A)(iii) of the Act. Neither the Act nor regulations define the phrase "substantially benefit." But the immigration service has interpreted the phrase broadly. *See Matter of Price*, 20 I&N Dec.

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

953, 956 (Assoc. Comm'r 1994) (holding that, "[g]iven the enormous popularity of golf in this country," a highly ranked professional golfer would substantially benefit the United States in the future); *see also* 6 *USCIS Policy Manual* F.(2)(A)(3).

The Director found insufficient evidence to support the Petitioner's claim that his proposed U.S. work would upgrade infrastructure and develop affordable homes in the United States. The Director noted that a 2023 "pre-joint venture agreement" between the Petitioner's Ethiopian company and a U.S. entity indicates the firms' deal "to buy, sell, own and operate . . . real estate property and Truck Transportation" in the United States.[2] The Director found these joint venture activities inconsistent with the Petitioner's stated U.S. plans to establish his own construction company and obtain a contracting license. Because the Petitioner did not explain this discrepancy, the Director found the evidentiary criterion unmet. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

On appeal, the Petitioner resolves the perceived discrepancy. He states that he did not offer the pre-joint venture agreement as proof of his work's prospective benefit to the United States, but rather to demonstrate his on-going activities in the construction field. The Petitioner maintains his intent to establish his own construction company in this country and describes the separate proposed joint venture as "complementary" to his proposed U.S. company. The Petitioner's "professional plan" states: "I intend to contribute my expertise to help the U.S. build and upgrade its infrastructure, create more local job opportunities, and generate more business tax revenue."

The Petitioner has sufficiently explained the discrepancy perceived by the Director. Also, in light of the immigration service's broad interpretation of the phrase "substantially benefit," the Petitioner has demonstrated that his U.S. work would substantially benefit the United States in the future. We will therefore withdraw the Director's contrary finding.

We will next review the additional evidentiary requirements that the Petitioner claims to meet. *See* 8 C.F.R. § 204.5(h)(3)(i-x). To satisfy these criteria, his evidence must objectively meet the parameters of applicable regulatory descriptions. *See* 6 *USCIS Policy Manual* F.(2)(B).

C. Lesser Nationally or Internationally Recognized Awards

This evidentiary criterion requires "[d]ocumentation of the [noncitizen]'s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

When adjudicating this requirement, USCIS first determines if a petitioner – as opposed, for example, to their employer – received the prizes or awards. 6 *USCIS Policy Manual* F.(2)(B)(1). Second, the Agency determines whether an award is nationally or internationally recognized and granted for excellence in the relevant field. *Id.*

[2] A joint venture is a business entity created by two or more parties, generally characterized by shared ownership, shared returns, shared risks, and shared governance. *See, e.g.*, 2 *USCIS Policy Manual* L.(5)(B) (in the context of nonimmigrant visa petitions for intracompany transferees under section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L), discussing joint ventures).

The Petitioner submitted copies of four certificates of appreciation, excellence, and recognition that Ethiopian government ministries and a construction contractors association issued him in 2022 and 2023 for his work in the construction field. The Petitioner claims that these awards are "recognized nationally in Ethiopia" and that he received them for excellence in his field.

The Director acknowledged the Petitioner's receipt of the awards for his work in the field. But the Director found insufficient evidence that the organizations issued the certificates for excellence or that the awards received national or international recognition.

The record does not support the Director's findings. Letters from the Ethiopian ministries that issued the certificates indicate their award for excellence. For example, a letter from the [redacted] states issuance of its certificate of appreciation to the Petitioner for his "progressive, outstanding, exemplary and magnificent performances continued sustainably over the last 25 years in the Ethiopian construction industry." Also, as the Petitioner argues, the certificates from the federal government agencies reflect the awards' national recognition.

The Petitioner has demonstrated his receipt of nationally recognized awards for excellence in his field. We will therefore withdraw the Director's contrary finding.

D. Remaining Issues

The Petitioner has met three of the ten initial evidentiary criteria for the requested immigrant visa category. We therefore need not reach and hereby reserve consideration of his appellate arguments regarding his claimed original contributions of major significance to his field and his purported performance in a leading or critical role for organizations with distinguished reputations. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

USCIS must now make a final merits determination. 8 C.F.R. § 204.5(h)(3). The Director did not issue such a finding. Rather than make a final merits determination in the first instance, we will remand the matter.

On remand, the Director must determine whether the Petitioner has sufficiently demonstrated sustained national or international acclaim and his achievements' recognition in the field of expertise to establish him as one of that small percentage who has risen to the field's very top. *See* 6 *USCIS Policy Manual* F.(2)(B)(2). The Director should consider all potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or was not presented as comparable evidence. *Id.* The petition's approval or denial depends on the type and quality of the evidence. *Id.*

III. CONCLUSION

The Petitioner demonstrated his work's prospective benefit to the United States and his receipt of a nationally recognized award. USCIS must now conduct a final merits determination.

ORDER: The Director's decision is withdrawn. The matter is remanded for a final merits determination and entry of a new decision consistent with the foregoing analysis.